by amendments to the present ordinance without conflicting with any of the statutory provisions." (Tr. 92.)

The Court of Appeals evidently stated the facts which occurred at the meetings of June 21 and 26, 1955, from the minutes of the committee on local transportation, Plaintiffs' Exhibits Nos. 5 and 6 (Tr. 93 through 96), disregarding Plaintiffs' Exhibit No. 4, which is a verified transcript of the colloquy between the chairman and members of the committee and counsel for the city. The statement of the chairman cannot be ascribed to counsel for the city and the chairman's motives in submitting for consideration of the city council a proposed ordinance or ordinances certainly cannot be ascribed to the city council in the passage of an ordinance.

Moreover this court has repeatedly said that it is not the function of the Federal courts to question the motives of a legislative body. *Arizona* v. *California* (1931), 283 U. S. 423; 75 L. Ed. 1154, 1166. *Tenney* v. *Brandhove* (1951), 341 U. S., 367; 95 L. Ed. 1019, 1027.

The ordinance which was subsequently passed differed not only in form but in substance from that originally proposed by the chairman. It is neither a franchise for a term of years nor exclusive, but an annual license ordinance subject to amendment or repeal under the police power of the city to regulate traffic and the use of streets for local transportation of persons and property for hire.

The courts below ignored the definition of "Terminal vehicle", as amended by the 1955 ordinance, which divorced terminal vehicle passengers from railroad and steamship carriers. "The destination intended by the passenger when he begins his journey and known to the carrier," to determine the character of the commerce, whether interstate or not, is absent from the Ordinance. *Sprout* v. *South Bend*, 277 U. S. 163, 168, cited by the Court of Appeals, Note 14, Appendix B, p. 44.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. [redacted]103

CITY OF CHICAGO, A MUNICIPAL CORPORATION,
Petitioner

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY; THE BALTIMORE AND OHIO RAILROAD COMPANY; THE CHESAPEAKE AND OHIO RAILWAY COMPANY; CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY; CHICAGO AND NORTH WESTERN RAILWAY COMPANY; CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY; CHICAGO GREAT WESTERN RAILWAY COMPANY; CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY COMPANY; CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY; CHICAGO NORTH SHORE AND MILWAUKEE RAILWAY; CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY; CHICAGO SOUTH SHORE AND SOUTH BEND RAILROAD; ERIE RAILROAD COMPANY; GRAND TRUNK WESTERN RAILROAD COMPANY; GULF, MOBILE AND OHIO RAILROAD COMPANY; ILLINOIS CENTRAL RAILROAD COMPANY; MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILROAD COMPANY; THE NEW YORK CENTRAL RAILROAD COMPANY; THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD COMPANY; THE PENNSYLVANIA RAILROAD COMPANY; WABASH RAILROAD COMPANY; AND RAILROAD TRANSFER SERVICE, INC., CORPORATIONS,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

JOHN C. MELANIPHY,
Corporation Counsel of the City of Chicago,
JOSEPH F. GROSSMAN,
Special Assistant Corporation Counsel,
Room 511—City Hall,
Chicago 2, Illinois,
Attorneys for Petitioner.

INDEX

SUBJECT MATTER.

CASES CITED.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

No. .....

CITY OF CHICAGO, A MUNICIPAL CORPORATION,

Petitioner

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY; THE BALTIMORE AND OHIO RAILROAD COMPANY; THE CHESAPEAKE AND OHIO RAILWAY COMPANY; CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY; CHICAGO AND NORTH WESTERN RAILWAY COMPANY; CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY; CHICAGO GREAT WESTERN RAILWAY COMPANY; CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY COMPANY; CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY; CHICAGO NORTH SHORE AND MILWAUKEE RAILWAY; CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY; CHICAGO SOUTH SHORE AND SOUTH BEND RAILROAD; ERIE RAILROAD COMPANY; GRAND TRUNK WESTERN RAILROAD COMPANY; GULF, MOBILE AND OHIO RAILROAD COMPANY; ILLINOIS CENTRAL RAILROAD COMPANY; MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILROAD COMPANY; THE NEW YORK CENTRAL RAILROAD COMPANY; THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD COMPANY; THE PENNSYLVANIA RAILROAD COMPANY; WABASH RAILROAD COMPANY; AND RAILROAD TRANSFER SERVICE, INC., CORPORATIONS,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Petitioner, City of Chicago, a municipal corporation of Illinois, respectfully applies for a writ of certiorari to

review the judgment of the United States Court of Appeals for the Seventh Circuit, in cause No. 11692, entitled The Atchison, Topeka and Santa Fe Railway Co., et al. *Plaintiffs-Appellants* v. City of Chicago, a municipal corporation, et al., *Defendants-Appellees* and Parmelee Transportation Company, *Defendant-Intervenor-Appellee*, on appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

The District Court, Honorable Walter J. LaBuy presiding, entered summary judgment against the plaintiffs and dismissed the action, pursuant to findings of fact and conclusions of law, printed in the transcript of record filed herein, pps. 154 to 160 (hereafter Tr.). The opinion of the District Court is reported in 136 F. Supp. 476. The opinion of the Court of Appeals is not yet reported and is printed in Appendix B hereto.

JURISDICTION.

The judgment of the Court of Appeals was entered January 17, 1957. Rehearing was denied February 20, 1957, Certified Record (hereafter Cert. R.) 17, attached to certified copy of Transcript. The jurisdiction of this Court is invoked under 28 U. S. C. Sec. 1254 (1).

QUESTIONS PRESENTED FOR REVIEW.

1. Did the courts below properly entertain jurisdiction on the constitutional question involving control of interstate commerce, when the paramount issue presented by the pleadings involved the construction of a city ordinance governed by state law.

2. Should the courts below have decided the non-constitutional question of the applicability or meaning of the ordinance instead of remitting the parties to the state courts for determination of that question.

3. Does the record support the conclusion of the Court of Appeals that counsel for the city who drafted the ordinance, as a substitute for a proposed special franchise to Parmelee Transportation Company (hereafter "Parmelee"), objected to the form and not to the substance of the ordinance first proposed.

4. Does the record support the conclusion of the Court of Appeals that the ordinance drafted by counsel for the city was in substance and in effect the same as the proposed special franchise to Parmelee.

5. Was the Court of Appeals justified in considering the motives of any member or members of the city council to determine the meaning, purpose or effect of the ordinance.

6. Does the ordinance in effect give Parmelee perpetual control of terminal vehicle licenses in the city of Chicago, as indicated in the Opinion of the Court of Appeals.

7. Does the ordinance, in effect, bar Railroad Transfer Service, Inc. (hereafter "Transfer") from the entire network of highways within the downtown area of Chicago, as stated by the Court of Appeals.

8. Does Transfer operate "terminal vehicles" as defined by the ordinance.

STATUTES AND ORDINANCES INVOLVED.

The statutory provisions involved are Secs. 23-1, 23-10, 23-27, 23-51, 23-52, 23-81, 23-105 and 23-106 of the Revised Cities and Villages Act of Illinois (Ill. Rev. Stat. 1955, Chap. 24, Art. 23, pps. 581, 582, 584, 586, 589).

The city ordinance involved is an ordinance passed by the city council of the city of Chicago July 26, 1955, amending Secs. 28-1 and 28-31 of the Municipal Code of Chicago and adding two new sections to said Code, numbered 28-31.1 and 28-31.2 (Tr. 44, 45). The sections of said ordinance

amended and added became part of Chapter 28 of the Municipal Code of Chicago entitled "Public Passenger Vehicles" (Cert. R. 57). Said Chapter 28, as amended July 26, 1955, will hereafter be referred to as the "Ordinance".

The statutory provisions and Ordinance cited above are printed in Appendix A hereto. The amendments to the Ordinance, passed July 26, 1955, are emphasized by italics.

STATEMENT OF CASE.

Respondent railroads (hereafter "Terminal Lines") and Transfer commenced action in the District Court against City of Chicago, petitioner, and its officers, for declaratory judgment and injunctive relief against the enforcement of the Ordinance. They asked the District Court to declare that the Ordinance is not applicable to operations carried on by Transfer under contracts with Terminal Lines, exclusively for the transfer of passengers between terminal stations; otherwise to declare the Ordinance void. Jurisdiction was invoked under 28 U. S. C. Secs. 1331 and 1337, the amount in controversy exceeding $3000.00 (Tr. 6, 7).

Parmelee moved to intervene as a defendant and asked that its petition for intervention be considered and treated as an answer and claim of the intervening petitioner in this proceeding (Tr. 60). The motion of Parmelee was allowed (Tr. 70).

City of Chicago and its officers, defendants, filed a motion for summary declaratory judgment, pursuant to Rule 56 of the Federal Rules of Civil Procedure (Tr. 71), to determine:

1. Whether plaintiff, Transfer, is a public utility under the laws of Illinois;

2. Whether said plaintiff, by virtue of its contract with plaintiff Terminal Lines, is operating its vehicles within

the city of Chicago exclusively as agent for and in behalf of plaintiff Terminal Lines as public utilities under the laws of Illinois;

3. Whether said plaintiff's operations are confined to the transportation of passengers on through route railroad and steamship transportation tickets between points outside of the corporate limits of the city in intrastate and interstate commerce;

4. Whether said plaintiff operates any vehicle on any public way for the transportation of passengers for hire from place to place within the corporate limits of the city, as provided in Section 28-2 of the Municipal Code of Chicago.

5. Whether said plaintiff is operating terminal vehicles within the city of Chicago, as defined in Sec. 28-1 of the Municipal Code of Chicago, as amended July 26, 1955;

6. Whether any of said plaintiff's operations are in local transportation of passengers at rates of fares subject to Section 28-31.2 of the Municipal Code of Chicago, as amended July 26, 1955;

7. Whether any of said plaintiff's operations are subject to any of the provisions of Chapter 28 of the Municipal Code of Chicago.

The District Court permitted the city to file its motion (Tr. 73); and found in its opinion and judgment order that Transfer's vehicles are "terminal vehicles" as defined in Section 28-1 and are subject to the provisions and regulations of Chapter 28 of the Municipal Code of Chicago, as amended, applicable thereto (Tr. 115).

The Court of Appeals did not pass on the question whether the Ordinance is applicable to Transfer's operations. The Court reversed and remanded the judgment of the District Court, after concluding that Section 28-31.1 of the 1955 ordinance limited the number of terminal

vehicle licenses to those held by Parmelee on July 26, 1955, and therefore is invalid. Appendix B, p. 50.

REASONS FOR GRANTING THE WRIT.

The Court of Appeals has rendered a decision holding invalid a most salutary city ordinance duly passed by the city council in the exercise of governmental powers of great importance delegated to the corporate authorities of the city by state law, for the protection of public health and safety, and for public convenience.

Although not explicitly stated in the opinion, the decision of the Court of Appeals is based on a construction of the Ordinance which interferes with the constitutional authority of Congress to regulate interstate commerce. Whether the Ordinance is susceptible to such construction is primarily an important state question which should be resolved by applicable state law.

It is clearly the duty of the Supreme Court to ascertain from the record whether the courts below had jurisdiction, though that question was not raised by counsel in the District Court or the Court of Appeals. *M. C. & L. M. Ry. Co. v. Swan* (1884), 111 U. S. 379, 382. *Shawneeroke C. & S. Corp. v. Westchester S. Corp.* (1935), 293 U. S. 449; 79 L. Ed. 583, 586. *Clark v. Paul Gray* (1939), 306 U. S. 583; 83 L. Ed. 1001.

The policy of this court in avoiding or postponing consideration of constitutional questions in advance of necessity has not been limited to jurisdictional determinations. In *Rescue Army v. Municipal Court* (1947), 331 U. S. 549, 91 L. Ed. 1666, 1678, this Court said:

> "The policy, however, has not been limited to jurisdictional determinations. For, in addition, 'the Court (has) developed, for its own governance in the cases confessedly within its jurisdiction, a series of rules under which it has avoided passing upon a large part

of all the constitutional questions pressed upon it for decision.' Thus, as those rules were listed in support of the statement quoted, constitutional issues affecting legislation will not be determined in friendly, non-adversary proceedings; in advance of the necessity of deciding them; in broader terms than are required by the precise facts to which the ruling is to be applied; if the record presents some other ground upon which the case may be disposed of; * * *"

The foregoing case is particularly pertinent to the issues in this case. Action was instituted by Terminal Lines and Transfer against the city as a friendly suit for declaratory judgment after a token threat of arrest was made to test the applicability to plaintiffs or validity of the 1955 amendments to the "Public Passenger Vehicles" ordinance. The city filed a motion for summary declaratory judgment on specific questions to determine the ultimate issue between plaintiffs and the city. As the case progressed, with intervention by Parmelee, seeking a restraining order (Tr. 61), the contest was developed principally between plaintiffs and intervenor.

In *Chicago* v. *Fieldcrest Dairies* (1941) 316 U. S. 168, 86 L. Ed. 1355, at p. 1357, this Court said:

"We granted the petition for certiorari (314 U. S. 604, *ante* 486, 62 S. Ct. 301), because of the doubtful propriety of the District Court and of the Circuit Court of Appeals in undertaking to decide such an important question of Illinois law instead of remitting the parties to the state courts for litigation of the state questions involved in the case. *Railroad Commission* v. *Pullman Co.*, 312 U. S. 496, 85 L. ed. 971, 61 S. Ct. 643.

"We are of the opinion that the procedure which we followed in the *Pullman Co.* case should be followed here. Illinois has the final say as to the meaning of the ordinance in question."

Reference to the Ordinance in Appendix A will disclose that it deals with local public passenger vehicles which are

not public utilities, pursuant to the corporate powers of the city under Article 23 of the Revised Cities and Villages Act. Section 23-51 of the Act which enables the city to license, tax and regulate hackmen, draymen, omnibus drivers, carters, cabmen, porters, expressmen and all others pursuing like occupations, and to prescribe their compensation, is necessarily limited to transportation service within the corporate limits of the city. *City of Rockford* v. *Heil*, (1937), 366 Ill. 526; 9 N. E. 2d 317. Section 28-3 of the Ordinance, which applies to all classes of public passenger vehicles, indicates that the Ordinance does not apply to interurban operations.

Unless otherwise expressly provided, all of the provisions of the Ordinance, after the definitions, apply to "terminal vehicles" as defined, as well as to all other public passenger vehicles. In addition to the general provisions of the Ordinance, there are special provisions covering livery vehicles (Secs. 28-19 through 28-20); sight-seeing vehicles (Sec. 28-21); taxicabs (Secs. 28-22 through 28-30) and terminal vehicles (Secs. 28-31 through 28-31.2).

Section 28-31.1, limiting the number of terminal vehicles, subject to public convenience and necessity, which is the predominant subject of controversy in this case, follows the pattern limiting the number of taxicab licenses in Section 28-22.1, specific reference to which is made in Section 28-31.1 relating to terminal vehicles. A similar provision is applicable to livery vehicles by Section 28-19. It will be noted that Section 28-6 of the Ordinance provides that the commissioner shall issue all public passenger vehicle licenses for the license period ending on the 31st day of December following date of its issuance.

The foregoing provisions are consistent with Illinois cases holding that the Ordinance was passed pursuant to Section 23-105 of the Revised Cities and Villages Act, authorizing the city council to pass and enforce all nec-

essary police ordinances. *The People, ex rel. Johns v. Thompson* (1930), 341 Ill. 466; 173 N. E. 137. *Yellow Cab Co. v. City of Chicago* (1947), 396 Ill. 388; 398; 71 N. E. 2d 652, 657.

The importance of this case is increased by the obvious fact that the decision of the Court of Appeals was based on the "legislative history" of the ordinance of June 26, 1955, amending Chapter 28 of the city code, without giving any consideration to the related provisions in the ordinance. For instance, the Court of Appeals said:

> "We are thus led to conclude that there is no valid legal basis for the above cited provisions of Sec. 28-31.1 of the 1955 ordinance. We are convinced that those provisions, which would in effect limit the number of terminal vehicle licenses to those held by Parmelee on July 26, 1955 and give Parmelee perpetual control thereof, constitute a designation of Parmelee by the council of the city, in lieu of Transfer, the instrumentality selected by the Terminal Lines, rather than an exercise of the city's police power over traffic. In this critical aspect the 1955 ordinance is invalid. If there were any doubt that this conclusion is correct, the legislative history of the ordinance dispels that doubt." (Appendix B, p. 50.)

The Court of Appeals ignored all of the related provisions of Chapter 28 which was amended by the 1955 ordinance, including Sec. 28-6 limiting the license to one calendar year.

The Court of Appeals laid great stress upon meetings of the committee on local transportation of June 21 and 26, 1955 to show the intent of the chairman of the committee and his motive in the preparation of an ordinance granting an exclusive franchise to Parmelee for 10 years "for the operation of terminal vehicles to transfer passengers and their baggage *between* railroad stations," to which counsel for the city was said to have objected because it was not

The basic question at issue between the city and the respondents is whether Transfer is a "terminal vehicle," as that term is defined by the Ordinance (Tr. 6, 73, 101). That was the paramount issue argued in the District Court by Terminal Lines and Transfer (Cert. R. 306 *et seq.*).

CONCLUSION.

This case involves an important local transportation problem governed by local law; and petitioner respectfully prays that the writ of certiorari be granted.

Respectfully submitted,

JOHN C. MELANIPHY,
Corporation Counsel of the City of Chicago,
JOSEPH F. GROSSMAN,
Special Assistant Corporation Counsel,
Room 511—City Hall,
Chicago 2, Illinois,
Attorneys for Petitioner.

APPENDIX A.

ILLINOIS REVISED STATUTES, 1955.

Chap. 24—Cities and Villages.

23-1. (Grant of powers.) The corporate authorities of a municipality shall have the powers enumerated in Sections 23-2 to 23-113 inclusive.

23-10. Regulate streets.) To regulate the use of the streets and other municipal property.

23-27. Streets—Traffic and sales upon.) To regulate traffic and sales upon the streets, sidewalks, public places, and municipal property.

23-51. License taxicab drivers, expressmen.) To license, tax and regulate hacknen, draymen, omnibus drivers, carters; cabmen, porters, expressmen, and all others pursuing like occupations, and to prescribe their compensation.

23-52. License runners.) To license, tax, regulate, and prohibit runners for cabs, busses, railroads, ships, hotels, public houses, and other similar businesses.

23-81. Promote health.) To do all acts and make all regulations, which may be necessary or expedient for the promotion of health or the suppression of disease.

23-105. Police power.) To pass and enforce all necessary police ordinances.

23-106. Ordinances and rules to execute powers—Limitations on punishments.) To pass all ordinances and make all rules and regulations, proper or necessary, to carry into effect the powers granted to municipalities, with such fines or penalties as may be deemed proper. No fine or penalty, however, except civil penalties provided for failure to make returns or to pay any taxes levied by the municipality shall

exceed $200.00 and no imprisonment shall exceed six months for one offense.

MUNICIPAL CODE OF CHICAGO.

Chapter 28—Public Passenger Vehicles.*

* For amendments to former Chapter 28 prior to its revision on 12-20-51, see footnote at end of this chapter.

DEFINITIONS.

28-1. As used in this chapter:

"Busman" means a person engaged in business as proprietor of one or more sightseeing buses.

"Cabman" means a person engaged in business as proprietor of one or more taxicabs or livery vehicles.

"Chauffeur" means the driver of a public passenger vehicle licensed by the city of Chicago as a public chauffeur.

"City" means the city of Chicago.

"Coachman" means a person engaged in business as proprietor of one or more terminal vehicles.

"Commissioner" means the public vehicle license commissioner, or any other body or officer having supervision of public passenger vehicle operations in the city.

"Council" means the city council of the city of Chicago.

"Livery vehicle" means a public passenger vehicle for hire only at a charge or fare for each passenger per trip or for each vehicle per trip fixed by agreement in advance.

"Person" means a natural person, firm or corporation in his own capacity and not in a representative capacity, the personal pronoun being applicable to all such persons of any number or gender.

"Public passenger vehicle" means a motor vehicle, as defined in the Motor Vehicle Law of the State of Illinois, which is used for the transportation of passengers for hire, excepting those devoted exclusively for funeral use or in

operation of a metropolitan transit authority or public utility under the laws of Illinois.

"Sightseeing vehicle" means a public passenger vehicle for hire principally on sightseeing tours at a charge or fare per passenger for each tour fixed by agreement in advance or for hire otherwise at a charge for each vehicle per trip fixed by agreement in advance.

"Taxicab" means a public passenger vehicle for hire only at lawful rates of fare recorded and indicated by taximeter in operation when the vehicle is in use for transportation of any passenger.

"Taximeter" means any mechanical device which records and indicates a charge or fare measured by distance traveled, waiting time and extra passengers.

"*Terminal vehicle*" *means a public passenger vehicle which is operated exclusively for the transportation of passengers from railroad terminal stations and steamship docks to points within the area defined in section 28-31.* [Passed, Comm. J. 12-29-54, p. 1596; amend. 1-30-52, p. 1921; 12-30-52, p. 3905; 7-26-55, p. 897.]

LICENSE REQUIRED.

28-2. It is unlawful for any person other than a metropolitan transit authority or public utility to operate any vehicle, or for any such person who is the owner of any vehicle to permit it to be operated, on any public way for the transportation of passengers for hire from place to place within the corporate limits of the city, except on a funeral trip, unless it is licensed by the city as a public passenger vehicle.

It is unlawful for any person to hold himself out to the public by advertisement or otherwise as a busman, cabman or coachman or as one who provides or furnishes any kind of public passenger vehicle service unless he has one or

more public passenger vehicles licensed for the class of service offered; provided that any association or corporation which furnishes call service for transportation may advertise the class of service which may be rendered to its members or subscribers, as provided in this chapter, if it assumes the liability and furnishes the insurance as required by section 28-23. [Passed, Com. J. 12-20-51, p. 1596; amend. 1-30-52, p. 1921; 12-30-52, p. 3905.]

INTERURBAN OPERATIONS.

28-3. Nothing in this chapter shall be construed to prohibit any public passenger vehicle from coming into the city to discharge passengers accepted for transportation outside the city. While such vehicle is in the city no person shall solicit passengers therefor and no roof light or other special light shall be used to indicate that the vehicle is vacant or subject to hire. A white card bearing the words "Not For Hire" printed in black letters not less than two inches in height shall be displayed on the windshield of the vehicle. Any person in control or possession of such vehicle who violates the provisions of this section shall be subject to arrest and fine of not less than fifty dollars nor more than two hundred dollars for each offense. [Passed, Com. J. 12-20-51; p. 1596; amend. 1-30-52, p. 1921.]

INSPECTIONS.

28-4. No vehicle shall be licensed as a public passenger vehicle until it has been inspected under the direction of the commissioner and found to be in safe operating condition and to have adequate body and seating facilities which are clean and in good repair for the comfort and convenience of passengers. [Passed, Com. J. 12-20-51, p. 1596; amend. 12-30-52, p. 3905.]

SPECIFICATIONS.

28-4.1. No vehicle shall be licensed as a livery vehicle or taxicab unless it has two doors on each side, and no vehicle having seating capacity for more than seven passengers shall be licensed as a public passenger vehicle unless it has at least three doors on each side or fixed aisle space for passage to doors. [Passed, Coun. J. 12-30-52, p. 3905.]

APPLICATION.

28-5. Application for public passenger vehicle licenses shall be made in writing signed and sworn to by the applicant upon forms provided by the commissioner. The application shall contain the full name and Chicago street address of the applicant, the manufacturer's name, model, length of time in use, horse power and seating capacity of the vehicle applicant will use if a license is issued, and the class of public passenger vehicle license requested. The commissioner shall cause each application to be stamped with the time and date of its receipt. The applicant shall submit a statement of his assets and liabilities with his application. [Passed, Coun. J. 12-20-51, p. 1596; amend. 1-30-52, p. 1921.]

INVESTIGATION AND ISSUANCE OF LICENSE.

28-6. Upon receipt of an application for a public passenger vehicle license the commissioner shall cause an investigation to be made of the character and reputation of the applicant as a law abiding citizen; the financial ability of the applicant to render safe and comfortable transportation service, to maintain or replace the equipment for such service and to pay all judgments and awards which may be rendered for any cause arising out of the operation of a public passenger vehicle during the license period. If

the commissioner shall find that the applicant is qualified and that the vehicle for which a license is applied for is in safe and proper condition as provided in this chapter, the commissioner shall issue a public passenger vehicle license to the owner of the vehicle for the license period ending on the thirty-first day of December following the date of its issuance, subject to payment of the public passenger vehicle license fee for the current year. [Passed. Coun. J. 12-20-51, p. 1596; amend. 4-16-52, p. 2178.]

LICENSE FEES.

28-7. The annual fee for each public passenger vehicle license of the class herein set forth is as follows:

Livery vehicle	$ 25.00
Sightseeing vehicle	125.00
Taxicab	40.00
Terminal vehicle	25.00

Said fee shall be paid in advance when the license is issued and shall be applied to the cost of issuing such license, including, without being limited to, the investigations, inspections and supervision necessary therefor, and to the cost of regulating all operations of public passenger vehicles as provided in this chapter.

Nothing in this section shall affect the right of the city to impose or collect a vehicle tax and any occupational tax, as authorized by the laws of the state of Illinois, in addition to the license fee herein provided. [Passed. Coun. J. 12-20-51, p. 1596; amend. 12-30-52, p. 3905.]

RENEWAL OF LICENSES.

28-8. All licenses for public passenger vehicles issued for the year 1951, which have not been revoked or surrendered prior to the time when such licenses for the year 1952 shall have been issued, may be renewed from year to

year, subject to the provisions of this chapter. [Passed. Coun. J. 12-20-51, p. 1598; amend. 1-30-52, p. 1921.]

PERSONAL LICENSE—FAIR EMPLOYMENT PRACTICE.

28-9. No public passenger vehicle license shall be subject to voluntary assignment or transfer by operation of law, except in the event of the licensee's induction or recall into the armed forces of the United States for active duty or in the event of the licensee's death. In case of death the assignment shall be made by the legal representatives of his estate. No assignment shall be effective until the assignee shall have filed application for a license and is found to be qualified as provided in sections 28-5 and 28-6. If qualified the license shall be transferred to him by the commissioner, subject to payment of a transfer fee of $50.00, the assumption by the assignee of all liabilities for loss or damage resulting from any occurrence arising out of or caused by the operation or use of the licensed public passenger vehicle before the effective date of the transfer, and the approval by the commissioner of the insurance to be furnished by the busman, cabman or coachman as required by section 28-12.

It is unlawful for any busman, cabman or coachman to lease or loan a licensed public passenger vehicle for operation by any person for transportation of passengers for hire within the city. No person other than a chauffeur, who is either the busman, cabman or coachman or one hired by the busman, cabman or coachman to drive such vehicle as his agent or employee, in the manner prescribed by the busman, cabman or coachman, shall operate such vehicle for the transportation of passengers for hire within the city.

There shall be no discrimination by any busman, cabman or coachman against any person employed or seeking employment as a chauffeur with respect to hire, promotion,

tenure, terms, conditions and privileges of employment on account of race, color, religion, national origin or ancestry. [Passed. Coun. J. 12-20-51, p. 1596; amend. 1-30-52, p. 1921; 12-30-52, p. 3905.]

EMBLEM.

28-10. The commissioner shall deliver with each license a sticker license emblem which shall bear the words "Public Vehicle License" and "Chicago" and the numerals designating the year for which such license is issued, a reproduction of the corporate seal of the city, the names of the mayor and the commissioner and serial number identical with the number of the public vehicle license. The predominant back-ground colors of such sticker license emblems shall be different from the vehicle tax emblem for the same years and shall be changed annually. The busman, cabman or coachman shall affix, or cause to be affixed, said sticker emblem on the inside of the glass part of the windshield of said vehicle. [Passed. Coun. J. 12-20-51, p. 1596; amend. 12-20-52, p. 3905.]

LICENSE CARD.

28-11. In addition to the license and sticker emblem the commissioner shall deliver a license card for each vehicle. Said card shall contain the name of the busman, cabman or coachman, the license number of the vehicle and the date of inspection thereof. It shall be signed by the commissioner and shall contain blank spaces upon which entries of the date of every inspection of the vehicle and such other entries as may be required shall be made. If shall be of different color each year. A suitable frame with glass cover shall be provided and affixed on the inside of the vehicle in a conspicuous place and in such manner as may be determined by the commissioner for insertion and removal of

the public passenger vehicle license card; and in every livery vehicle and taxicab said frame shall also be provided for insertion and removal of the chauffeur's license card and such other notice as may be required by the provisions of this chapter and the rules of the commissioner. It is unlawful to carry any passenger or his baggage unless the license cards are exposed in the frame as provided in this section. [Passed. Coun. J. 12-20-51, p. 1596; amend. 12-30-52, p. 3905.]

INSURANCE.

28-12. Every busman, cabman or coachman shall carry public liability and property damage insurance and workmen's compensation insurance for his employees with solvent and responsible insurers approved by the commissioner, authorized to transact such insurance business in the state of Illinois, and qualified to assume the risk for the amounts hereinafter set forth under the laws of Illinois, to secure payment of any loss or damage resulting from any occurrence arising out of or caused by the operation or use of any of the busman's, cabman's or coachman's public passenger vehicles.

The public liability insurance policy or contract may cover one or more public passenger vehicles, but each vehicle shall be insured for the sum of at least five thousand dollars for property damage and fifty thousand dollars for injuries to or death of any one person and each vehicle having seating capacity for not more than seven adult passengers shall be insured for the sum of at least one hundred thousand dollars for injuries to or death of more than one person in any one accident. Each vehicle having seating capacity for more than seven adult passengers shall be insured for injuries to or death of more than one person in any one accident for at least five thousand dollars more for each such additional passenger capacity.

Every insurance policy or contract for such insurance shall provide for the payment and satisfaction of any final judgment rendered against the busman, cabman or coachman and person insured, or any person driving any insured vehicle, and that suit may be brought in any court of competent jurisdiction upon such policy or contract by any person having claims arising from the operation or use of such vehicle. It shall contain a description of each public passenger vehicle insured, manufacturer's name and number, the state license number and the public passenger vehicle license number.

In lieu of an insurance policy or contract a surety bond or bonds with a corporate surety or sureties authorized to do business under the laws of Illinois, may be accepted by the commissioner for all or any part of such insurance; provided that each bond shall be conditioned for the payment and satisfaction of any final judgment in conformity with the provisions of an insurance policy required by this section.

All insurance policies or contracts or surety bonds required by this section, or copies thereof certified by the insurers or sureties, shall be filed with the commissioner and no insurance or bond shall be subject to cancellation except on thirty days' previous notice to the commissioner. If any insurance or bond is cancelled or permitted to lapse for any reason, the commissioner shall suspend the license for the vehicle affected for a period not to exceed thirty days, to permit other insurance or bond to be supplied in compliance with the provisions of this section. If such other insurance or bond is not supplied within the period of suspension of the license, the mayor shall revoke the license for such vehicle. [Passed. Comm. J. 12-20-51, 1596; amend. 1-30-52, p. 1921; 12-30-52, p. 3905.]

PAYMENT OF JUDGMENTS AND AWARDS.

28-13. All judgments and awards rendered by any court or commission of competent jurisdiction for loss or damage in the operation or use of any public passenger vehicle shall be paid by the busman, cabman or coachman within ninety days after they shall become final and not stayed by supersedeas. This obligation is absolute and not contingent upon the collection of any indemnity from insurance. [Passed. Coun. J. 12-20-51, p. 1596; amend. 12-30-52, p. 3905.]

SUSPENSION OF LICENSE.

28-14. If any public passenger vehicle shall become unsafe for operation or if its body or seating facilities shall be so damaged, deteriorated or unclean as to render said vehicle unfit for public use, the license therefor shall be suspended by the commissioner until the vehicle shall be made safe for operation and its body shall be repaired and painted and its seating facilities shall be reconditioned or replaced as directed by the commissioner. In determining whether any public passenger vehicle is unfit for public use the commissioner shall give consideration to its effect on the health, comfort and convenience of passengers and its public appearance on the streets of the city.

Upon suspension of a license for any cause, under the provisions of this chapter, the license sticker emblem shall be removed by the commissioner from the windshield of the vehicle and an entry of the suspension shall be made on the license card. If the suspension is terminated an entry thereof shall be made on the license card by the commissioner and a duplicate license sticker shall be furnished by the commissioner for a fee of one dollar. The commissioner shall notify the department of police of every suspension and termination of suspension. [Passed. Coun. J. 12-20-51, p. 1596.]

28-15. If any summons or subpoena issued by a court or commission cannot be served upon the busman, cabman or coachman at his last Chicago address recorded in the office of the commissioner within sixty days after such process is delivered to the person authorized to serve it, and the busman, cabman, or coachman fails to appear in answer to such process for want of service, or if any busman, cabman or coachman shall refuse or fail to pay any judgment or award as provided in section 28-13, or shall lease or loan any of his licensed public passenger vehicles for operation by any person for hire or shall be convicted of a felony or any criminal offense involving moral turpitude, the mayor shall revoke all public vehicle licenses held by him.

If any public passenger vehicle license was obtained by application in which any material fact was omitted or stated falsely, or if any public passenger vehicle is operated in violation of the provisions of this chapter for which revocation of the license is not mandatory, or if any public passenger vehicle is operated in violation of the rules and regulations of the commissioner relating to the administration and enforcement of the provisions of this chapter, the commissioner may recommend to the mayor that the public passenger vehicle license therefor be revoked and the mayor, in his discretion, may revoke said license.

Upon revocation of any license, the commissioner shall remove the license sticker emblem and the license card from the vehicle affected. [Passed, Coun. J. 12-20-51, p. 1596; amend. 1-30-52, p. 1921; 12-30-52, p. 3905.]

INTERFERENCE WITH COMMISSIONER'S DUTIES.

28-16. Every busman, cabman or coachman shall deliver or submit his public passenger vehicles for inspection or the performance of any other duty by the commissioner upon demand. It is unlawful for any person to interfere with or hinder or prevent the commissioner from discharging any duty in the enforcement of this chapter. [Passed. Coun. J. 12-20-51, p. 1596; amend. 12-30-52, p. 3905.]

FRONT SEAT PASSENGER.

28-17. It is unlawful to permit more than one passenger to occupy the front seat with the chauffeur in any public passenger vehicle. [Passed. Coun. J. 12-20-51, p. 1596.]

NOTICE.

28-18. It is the duty of every busman, cabman or coachman to notify the commissioner whenever any change in his Chicago address is made. Any notice required to be given to the busman, cabman or coachman shall be sufficient if addressed to the last Chicago address recorded in the office of the commissioner. [Passed. Coun. J. 12-20-51, p. 1596; amend. 12-30-52, p. 3905.]

LIVERY VEHICLES.

28-19. No person shall be qualified for a livery vehicle license and a taxicab license at the same time; nor shall any person having a livery vehicle license be associated with anyone for sending or receiving calls for taxicab service.

No license for any livery vehicle shall be issued except in the annual renewal of such license or upon transfer to permit replacement of a vehicle for that licensed unless,

after a public hearing, the commissioner shall determine that public convenience and necessity require additional livery service and shall recommend to the council the maximum number of such licenses to be authorized by ordinance.

Not more than six passengers shall be accepted for transportation in a livery vehicle on any trip. [Passed. Coun. J. 12-20-51, p. 1596; amend. 1-30-52, p. 1921.]

TAXIMETER PROHIBITED.

28-19.1. It is unlawful for any person to operate or drive a livery vehicle equipped with a meter which registers a charge or fare or indicates the distance traveled by which the charge or fare to be paid by a passenger is measured. [Passed. Coun. J. 1-30-52, p. 1921.]

SOLICITATION OF PASSENGERS PROHIBITED.

28-19.2. It is unlawful for any person to solicit passengers for transportation in a livery vehicle on any public way. No such vehicle shall be parked on any public way for a time longer than is reasonably necessary to accept passengers in answer to a call for service and no passengers shall be accepted for any trip in such vehicle without previous engagement for such trip, at a fixed charge or fare, through the station or office from which said vehicle is operated. [Passed. Coun. J. 1-30-52, p. 1921.]

LIVERY ADVERTISING.

28-20. It is unlawful for the cabman of any livery vehicle, or the station from which it is operated to use the word "taxi", "taxicab" or "cab" in connection with or as part of the name of the cabman or his trade name.

The outside of the body of each livery vehicle shall be

uniform black, blue or blue-black color. No light fixtures or lights shall be attached to or exposed so as to be visible outside of any livery vehicle, except such as are required by the law of the state of Illinois regulating traffic by motor vehicles and one rear red light in addition to those required by said law. No name, number or advertisement of any kind, excepting official license emblems or plates, shall be painted or carried so as to be visible outside of any livery vehicle.

It is unlawful for any person to hold himself out to the public by advertisement, or otherwise, to render any livery service unless he is the cabman of a licensed livery vehicle. [Passed. Coun. J. 12-20-51, p. 1596.]

SIGHTSEEING VEHICLES.

28-21. Sightseeing vehicles shall not be used for transportation of passengers for hire except on sightseeing tours or chartered trips. Passengers for sightseeing tours shall not be solicited upon any public way except at bus stands specially designated by the council for sightseeing vehicles.

It is unlawful for any cabman or coachman to advertise his public passenger vehicle for hire on sightseeing tours. [Passed. Coun. J. 12-20-51, p. 1596; amend. 12-30-52, p. 3905.]

TAXICABS.

28-22. Every taxicab shall be operated regularly to the extent reasonably necessary to meet the public demand for service. If the service of any taxicab is discontinued for any reason except on account of strike, act of God or cause beyond the control of the cabman, the commissioner may give written notice to the cabman to restore the taxicab to service, and if it is not restored within five days after

notice, the commissioner may recommend to the mayor that the taxicab license be revoked and the mayor, in his discretion, may revoke same. [Passed. Coun. J. 12-20-51, p. 1596.]

PUBLIC CONVENIENCE AND NECESSITY.

28-22.1. Not more than 3761 taxicab licenses shall be issued unless, after a public hearing, the commissioner shall report to the council that public convenience and necessity require additional taxicab service and shall recommend the number of taxicab licenses which may be issued. Notice of such hearing stating the time and place thereof shall be published in the official newspaper of the city at least twenty days prior to the hearing and by mailing a copy thereof to all taxicab licensees. At such hearing any licensee, in person or by attorney, shall have the right to cross-examine witnesses and to introduce evidence pertinent to the subject. At any time and place fixed for such hearing it may be adjourned to another time and place without further notice.

In determining whether public convenience and necessity require additional taxicab service, due consideration shall be given to the following:

1. The public demand for taxicab service;
2. The effect of an increase in the number of taxicabs on the safety of existing vehicular and pedestrian traffic;
3. The effect of increased competition,
   (a) on revenues of taxicab licensees;
   (b) on cost of rendering taxicab service, including provisions for proper reserves and a fair return on investment in property devoted to such service;
   (c) on the wages or compensation, hours and conditions of service of taxicab chauffeurs;

4. The effect of a reduction, if any, in the level of net revenues to taxicab licensees on reasonable rates of fare for taxicab service;

5. Any other facts which the commissioner may deem relevant.

If the commissioner shall report that public convenience and necessity require additional taxicab service, the council, by ordinance, may fix the maximum number of taxicab licenses to be issued, not to exceed the number recommended by the commissioner. [Passed. Coun. J. 1-30-52, p. 1921.]

IDENTIFICATION OF TAXICAB AND CABMAN.

28-23. Every taxicab shall have the cabman's name, telephone number and the public passenger vehicle license number plainly painted in plain Gothic letters and figures of three-eighth inch stroke and at least two inches in height in the center of the main panel of the rear doors of said vehicle. In lieu of the cabman's telephone number the name and telephone number of any corporation or association with which the cabman is affiliated may be painted in the same manner, provided such corporation or association shall have assumed equal liability with the cabman for any loss or damage resulting from any occurrence arising out of or caused by the operation or use of any of the cabman's taxicabs and shall carry and furnish to the commissioner public liability and property damage insurance to secure payment of such loss or damage as provided in section 28-12. The public vehicle license number assigned to any taxicab shall be assigned to the same vehicle or to any vehicle substituted therefor upon annual renewal of the license. No other name, number or advertisement of any kind, excepting signs required by this chapter, official license emblems or plates and a trade emblem, in a manner approved by the commissioner, shall

be painted or carried so as to be visible on the outside of any taxicab. [Passed. Coun. J. 12-20-51, p. 1596; amend: 1-30-52, p. 1921.]

TAXIMETERS.

28-24. Every taxicab shall be equipped with a taximeter connected with and operated from the transmission of the taxicab to which it is attached. The taximeter shall be equipped with a flag at least three inches by two inches in size. The flag shall be plainly visible from the street and shall be kept up when the taxicab is for hire and shall be kept down when it is engaged.

Taximeters shall have a dial or dials to register the tariff in accordance with the lawful rates and charges. The dial shall be in plain view of the passenger while riding and between sunset and sunrise the dial shall be lighted to enable the passenger to read it.

It is unlawful to operate a taxicab for hire within the city unless the taximeter attached thereto has been sealed by the commissioner. [Passed. Coun. J. 12-20-51, p. 1596; amend. 1-30-52, p. 1921.]

TAXIMETER INSPECTION.

28-25. At the time a taxicab license is issued and semi-annually thereafter the taximeter shall be inspected and tested by the commissioner to determine if it complies with the specifications of this chapter and accurately registers the lawful rates and charges. If it is in proper condition for use, the taximeter shall be sealed and a written certificate of inspection shall be issued by the commissioner to the cabman. Upon complaint by any person that a taximeter is out of working order or does not accurately register the lawful rates and charges it shall be again inspected and tested and, if found to be in improper working

condition or inaccurate, it shall be unlawful to operate the taxicab to which it is attached until it is equipped with a taximeter which has been inspected and tested by the commissioner, found to be in proper condition, sealed and a written certificate of inspection therefor is issued.

The cabman or person in control or possession of any taxicab shall deliver it with the taximeter attached or deliver the taximeter detached from the taxicab for inspection and test as requested by the commission. The cabman may be present or represented when such inspection and test is made. [Passed. Coun. J. 12-20-51, p. 1596.]

TAMPERING WITH METERS.

28-26. It is unlawful for any person to tamper with, mutilate or break any taximeter or the seal thereof or to transfer a taximeter from one taxicab to another for use in transportation of passengers for hire before delivery of the taxicab with a transferred taximeter for inspection test and certification by the commissioner as provided in section 28-25. [Passed. Coun. J. 12-20-51, p. 1596.]

TAXIMETER INSPECTION FEE.

28-27. The fee for each certificate of inspection shall be three dollars, but no charge shall be made for any certificate when the inspection and test is made upon complaint, and it is found that the taximeter is in proper working condition and accurately registers the lawful rates and charges. [Passed. Coun. J. 12-20-51, p. 1596.]

TAXICAB SERVICE.

28-28. It is unlawful to refuse any person transportation to any place within the city in any taxicab which is unoccupied by a passenger for hire unless it is on its way to pick up a passenger in answer to a call for service or it

is out of service for any other reason. When any taxicab is answering a call for service or is otherwise out of service it shall not be parked at a cabstand, and no roof light or other special light shall be used to indicate that the vehicle is vacant or subject to hire. A white card bearing the words "Not For Hire" printed in black letters not less than two inches in height shall be displayed on the windshield of such taxicab. [Passed. Coun. J. 12-20-51, p. 1596.]

GROUP RIDING.

28-29. Group riding is prohibited in taxicabs, except as directed by the passenger first engaging the taxicab. Not more than five passengers shall be accepted for transportation on any trip; provided that additional passenger, under twelve years of age accompanied by an adult passenger shall be accepted if the taxicab has seating capacity for them. [Passed. Coun. J. 12-20-51, p. 1596.]

FRONT SEAT PASSENGER.

28-29.1. No passenger shall be permitted to ride on the front seat with the chauffeur of the taxicab unless all other seats are occupied. [Passed. Coun. J. 12-20-51, p. 1596.]

TAXICAB FARES.

28-30. Rates of fare for taxicabs shall be as follows:

For the first one-quarter of a mile or fraction thereof for one person	35 cents
For each additional one-half of a mile or fraction thereof for one person	10 cents
For each additional person of twelve years or more for the whole trip	10 cents
For each three minutes of waiting time or fraction thereof	10 cents

Waiting time shall include the time beginning three minutes after call time at the place to which the taxicab has

been called when it is not in motion, the time consumed by unavoidable delays at street intersections, bridges or elsewhere and the time consumed while standing at the direction of a passenger.

Every passenger under twelve years of age when accompanied by an adult shall be carried without charge.

Ordinary hand baggage of passengers shall be carried without charge. A fee of twenty-five cents may be charged for carrying a trunk, but no trunk shall be carried except inside of the taxicab.

Immediately on arrival at the passenger's destination it shall be the duty of the chauffeur to throw the taximeter lever to the non-recording position and to call the passenger's attention to the fare registered.

It is unlawful for any person to demand or collect any fare for taxicab service which is more or less than the rates established by the foregoing schedule, or for any passenger to refuse payment of the fare so registered. [Passed. Coun. J. 12-20-51, p. 1596; amend. 1-30-52, p. 1921; 11-16-53, p. 6085.]

TERMINAL VEHICLES.

28-31. *Terminal vehicles shall not be used for transportation of passengers for hire except from railroad terminal stations and steamship docks to destinations in the area bounded on the north by E. and W. Ohio street; on the west by N. and S. Desplaines street; on the south by E. and W. Roosevelt road; and on the east by Lake Michigan.* [Passed. Coun. J. 12-20-51, p. 1596; amend. 1-30-52, p. 1921; 12-30-52, p. 3905; 7-26-55, p. 897.]

PUBLIC CONVENIENCE AND NECESSITY.

28-31.1. *No license for any terminal vehicle shall be issued except in the annual renewal of such license or upon*

transfer to permit replacement of a vehicle for that licensed unless, after a public hearing held in the same manner as specified for hearings in section 28-22.1, the commissioner shall report to the council that public convenience and necessity require additional terminal vehicle service and shall recommend the number of such vehicle licenses which may be issued.

In determining whether public convenience and necessity require additional terminal vehicle service due consideration shall be given to the following:

1. *The public demand for such service;*
2. *The effect of an increase in the number of such vehicles on the safety of existing vehicular and pedestrian traffic in the area of their operation;*
3. *The effect of an increase in the number of such vehicles upon the ability of the licensee to continue rendering the required service at reasonable fares and charges to provide revenue sufficient to pay for all costs of such service, including fair and equitable wages and compensation for licensee's employees and a fair return on the investment in property devoted to such service;*
4. *Any other facts which the commissioner may deem relevant.*

If the commissioner shall report that public convenience and necessity require additional terminal vehicle service, the council, by ordinance, may fix the maximum number of terminal vehicle licenses to be issued not to exceed the number recommended by the commissioner. [Passed: Comm. J. 7-26-55, p. 897.]

LOCAL FARES.

28-31.2. *The rate of fare for local transportation of every passenger in terminal vehicles of the licensee shall be uniform, regardless of the distance traveled; provided*

that children under 12 years of age, when accompanied by an adult, shall be carried at not more than half fare. Such rates of fare shall be posted in a conspicuous place or places within each vehicle as determined by the commissioner. [Passed. Comm. J. 7-26-55, p. 897.]

PENALTY.

28-32. Any person violating any provision of this chapter for which a penalty is not otherwise provided shall be fined not less than $5.00 nor more than $100.00 for the first offense, not less than $25.00 nor more than $100.00 for the second offense during the same calendar year, and not less than $50.00 nor more than $100.00 for the third and succeeding offenses during the same calendar year, and each day that such violation shall continue shall be deemed a separate and distinct offense. [Passed. Coun. J. 12-20-51, p. 1596.]

NOTE: The following list covers amendments prior to 12-20-51 to former Chapter 28, revised 12-28-45, p. 4689:

28-4. 2-6-48, p. 1918; 3-1-48, p. 1983.
28-8. 2-28-46, p. 5167; 2-5-47, p. 7249; 2-6-48, p. 1918.
28-18. 2-28-46, p. 5167; 2-5-47, p. 7249; 2-6-48, p. 1918.
28-19. 2-6-48, p. 1918; 3-1-48, p. 1983; 12-29-50, p. 7622.
28-29. 9-29-48, p. 2978.
28-35. 8-21-41, p. 5457; 10-27-43, p. 803; 12-28-44, p. 2626.
28-36. 10-27-43, p. 803.
28-38. 8-21-41, p. 5457.

APPENDIX B.

IN THE UNITED STATES COURT OF APPEALS,
For the Seventh Circuit.

No. 11692 SEPTEMBER TERM, 1956, SEPTEMBER SESSION, 1956.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, et al.,
Plaintiffs-Appellants,
v.
CITY OF CHICAGO, a municipal corporation, et al.,
Defendants-Appellees,
and
PARMELEE TRANSPORTATION COMPANY,
Defendant-Intervenor-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

January 17, 1957

Before MAJOR, SWAIM and SCHNACKENBERG, *Circuit Judges.*

SCHNACKENBERG, *Circuit Judge.* Twenty-one railroads,[1]

1. The Atchison, Topeka and Santa Fe Railway Company; The Baltimore and Ohio Railroad Company; The Chesapeake and Ohio Railway Company; Chicago, Burlington & Quincy Railroad Company; Chicago & Eastern Illinois Railroad Company; Chicago Great Western Railway Company; Chicago, Indianapolis and Louisville Railway Company; Chicago, Milwaukee, St. Paul & Pacific Railroad Company; Chicago North Shore and Milwaukee Railway; Chicago and North Western Railway Company; Chicago, Rock Island & Pacific Railroad Company; Chicago South Shore and South Bend Railroad; Erie Railroad Company; Grand Trunk Western Railroad Company; Gulf, Mobile and Ohio Rail-

herein sometimes referred to as Terminal Lines, and Railroad Transfer Service, Inc., sometimes herein referred to as Transfer, on October 24, 1955 brought an action in the district court against defendant City of Chicago, sometimes herein referred to as the city, and certain officials thereof.[2] Plaintiffs' complaint seeks a declaratory judgment and injunctive relief against the enforcement against them of an ordinance known as chapter 28 of the municipal code of Chicago, as amended by an ordinance enacted July 26, 1955. Plaintiffs asked the district court to declare by its judgment, *inter alia*, that the ordinance, as amended in 1955, is void as applied to them.

Parmelee Transportation Company, sometimes herein referred to as Parmelee, on its petition was granted leave to intervene as a defendant.[3]

On motion of defendants, other than Parmelee, pursuant to rule 56 of the federal rules of civil procedure,[4] and on the pleadings, affidavits and exhibits submitted by all parties, the district court on January 12, 1956 granted a summary judgment against plaintiffs and dismissed their action.[5] 136 F. Supp. 476. From said judgment this appeal was taken.[6]

---

road Company; Illinois Central Railroad Company; Minneapolis, St. Paul & Sault Ste. Marie Railroad Company; The New York Central Railroad Company; The New York, Chicago and St. Louis Railroad Company; The Pennsylvania Railroad Company; and the Wabash Railroad Company.

2. Richard J. Daley, as mayor; John C. Melaniphy, as acting corporation counsel; Timothy P. O'Connor, as commissioner of police; and William P. Flynn, as public license commissioner.

3. The district court considered the petition as an answer to the complaint.

4. Fed. Rules of Civil Procedure, rule 56, 28 U. S. C. A.

5. On the same day the district court filed "findings of fact" and "conclusions of law", one conclusion being that there is no genuine issue of fact involved in this controversy.

6. On January 13, 1956 the district court ordered that defendants, other than Parmelee, be enjoined from enforcing the ordi-

The undisputed facts we now set forth.

There are eight passenger terminals in downtown Chicago, each being used by from one to six railroads. No one railroad passes through Chicago, but about 3900 railroad passengers daily travel through Chicago on continuous journeys which begin and end at points outside Chicago. At Chicago, they transfer from an incoming, to an outgoing, railroad. The only practical method of transferring these passengers between the different terminal stations is by motor vehicle equipped to carry them and their hand baggage simultaneously. More than 99 per cent of the passengers so transferred between terminal stations are traveling on through tickets between points of origin and destination located in different states. They are carried over public ways of the city.

Transfer began its operations on October 1, 1955, but has not applied to the city for public passenger terminal vehicle licenses. These transfer operations are required by a tariff filed with the Interstate Commerce Commission.[7] They have been provided for by tariffs for more than the past forty years.

Pursuant to such tariffs a passenger traveling through

nance in question against plaintiffs upon the latter filing supersedeas bond of $50,000. It is our understanding that this bond was filed.

7. Local and Joint Passenger Tariff No. 3 governing, *inter alia*, passengers and baggage transfer between stations in Chicago, was filed with the Interstate Commerce Commission on behalf of Terminal Lines. On page 11 of said tariff, in Section 2 thereof, the Terminal Lines are listed according to the Chicago stations which they enter and it is set forth in Section 2 thereof that transfer is required between all railroad stations when transfer is necessary, and in Column 4 appears "Passenger transfer included", while in Column 5 there appears "Transfer of all baggage included".

Page 5 of said tariff in Section 4 thereof provides in rule 4, in part, as follows:

"Through Transportation. (a) Where it is designated in Column 4, Section 2, that passenger transfer is included,

Chicago purchases at his point of origin a railroad ticket composed of a series of coupons covering his complete transportation to h' 'estination. If his through journey requires him to transfer from one railroad passenger terminal in Chicago to another, a part of his ticket consists of a coupon good for the transfer of himself and his hand baggage between such terminals. The expense of the required transfer service is absorbed by the railroads.

The tariffs provide that any such required transfer service shall be without additional charge where a one-way fare from Chicago to destination would be more than a specified minimum sum. Where such fare would be less than such minimum, a fixed charge which varies with the fare must be added to cover the required transfer service.

Prior to October 1, 1955, there had existed for many years arrangements between the Terminal Lines and Parmelee whereby it furnished this service for coupon-holding passengers. On June 13, 1955, the Terminal Lines ended their arrangement with Parmelee effective September 30, 1955. Under date of October 1, 1955, the Terminal Lines and Transfer executed a contract. In brief, this contract[8] provides that, upon delivery of a transfer coupon to Transfer by a through-passenger, it will carry him and his hand baggage from the incoming to the appropriate outgoing station without charge. Transfer is compensated by the outgoing terminal railroad. Transfer is given the exclusive

transfer coupon must be included in through ticket without additional collection."

And rule 6 in Section 1, in part, provides:

"Through Transportation. (a) Where it is designated in Column 5, Section 2, that baggage transfer is included, baggage may be checked through without additional collection."

8. On or about September 19, 1955, the railroads filed copies of the contract with the Interstate Commerce Commission and with the Illinois Commerce Commission.

right to perform this transfer service. Transfer devotes its vehicles exclusively to service under the contract.[9]

On and prior to June 13, 1955, there was in effect an ordinance of the city, being said chapter 28 of the municipal code, consisting of sections 28-1 to 28-32,[10] for the regulation of "Public Passenger Vehicles." Section 28-1 contained the following definitions, *inter alia*:

> "'Public passenger vehicle' means a motor vehicle, as defined in the Motor Vehicle Law of the State of Illinois, which is used for the transportation of passengers for hire, excepting those devoted exclusively for funeral use or in operation of a metropolitan transit authority or public utility under the laws of Illinois."
>
> * * * * * *
>
> "'Terminal vehicle' means a public passenger vehicle which is operated under contracts with railroad and steamship companies, exclusively for the transfer of passengers from terminal stations."

Section 28-31 provided:

> "28-31. No person shall be qualified for a terminal vehicle license unless he has a contract with one or more railroad or steamship companies for the transportation of their passengers from terminal stations.
>
> "It is unlawful to operate a terminal vehicle for the transportation of passengers for hire except for their transfer from terminal stations to destinations in the area bounded on the north by E. and W. Ohio Street; on the west by N. and S. Desplaines Street; on the south by E. and W. Roosevelt Road; and on the east by Lake Michigan."

9. The contract also provides that Transfer shall perform certain additional baggage transfer services for Terminal Lines. The transfer of a passenger's *checked* baggage by Transfer in vehicles other than "terminal vehicles", although covered by terms of the contract between Terminal Lines and Transfer, as well as actually performed by Parmelee prior to October 1, 1955, is not involved in this case.

10. Herein sometimes referred to as the prior ordinance.

Certain other parts of chapter 28 incorporated regulations enacted pursuant to the police power of the city.[11]

Parmelee was, on and prior to September 30, 1955, the only person having a transfer contract with the Terminal Lines and licensed to operate terminal vehicles under the ordinance.

At a meeting of the committee on local transportation of the Chicago city council held on July 21, 1955, the chairman stated that recently he had been advised by the Vehicle License Commissioner that he had received a communication from Parmelee advising that its contract with the railroads was to be canceled out in September of that year, "which would make it appear that the railroads were taking the position of dictating who would or could operate terminal vehicles in Chicago; that he did not think that was right and had prepared an ordinance with the assistance of Mr. Gross, and had it introduced in the city council and referred it to the committee; that subsequently he had discussed said ordinance with Mr. Grossman of the corporation counsel's office and that, as a result of his conference with Mr. Grossman, it would appear that, while he was on the right track in the matter, his method of approach was wrong."

Mr. Grossman informed the committee that he had looked over the ordinance "as introduced" by the chairman and was of the opinion that it was not in proper form; but that he believed the objective could be obtained

11. These are provisions for granting and suspension of licenses, safety regulations based on the type of vehicle, number of passengers permitted, condition and maintenance of vehicles, inspection thereof, etc., financial responsibility of operators, investigation of character of prospective licensees and continuing supervision thereof; requirements for maintenance of adequate insurance, determination of public convenience and necessity with respect to number of certain intrastate vehicles, *i.e.* livery and taxicabs, which are to be permitted on the city streets, and regulation of taxi fares through meters.

in some other way. He said he would endeavor to prepare and submit an ordinance on this subject.

The chairman's proposed ordinance, which met with Mr. Grossman's objection as to form, and which was laid aside, in brief would have granted an exclusive franchise for ten years to Parmelee for the operation of terminal vehicles to transfer passengers and their baggage between railroad stations.[12]

On July 26, 1955, the chairman stated that the committee was in session to receive a report from Mr. Grossman who had prepared a substitute ordinance which would accomplish what the committee had in mind, namely, placing the licensing and operation of terminal vehicles under the complete control of the city of Chicago, whereas, as the code then provided, the only one who could secure a license for the operation of a terminal vehicle was someone who had a contract with the railroads.

On recommendation of the committee, the council on the same day passed the ordinance now under attack.[13]

1. The city and Parmelee concede that Transfer is engaged in interstate commerce. In *United States* v. *Yellow Cab Co.*, 332 U. S. 218, 228, Parmelee's operation (including that part now being carried on by Transfer) was held to be an integral step in an interstate movement and,

12. §2 read: "Subject to all the conditions of this ordinance, exclusive permission and authority is hereby granted to the licensee to operate terminal vehicles in the City for a period of ten (10) years, commencing on ....., 1955, and ending on ..... 1965."

§4 provided: "It is unlawful for any person to be an operator of one or more terminal vehicles on any public way from place to place within the corporate limits of the city unless such terminal vehicles are licensed by the City as terminal vehicles. * * *"

§11 provided: "Upon the effective date of this ordinance, the commissioner shall issue licenses hereunder to licensee in not to exceed the number of licenses held by such licensee on April 1, 1955. * * *"

13. Herein sometimes referred to as the 1955 ordinance.

therefore, a constituent part of interstate commerce.[14] The court pointed out that Chicago is the terminus of a large number of railroads engaged in interstate passenger traffic and that a great majority of the persons making interstate railroad trips which carry them through Chicago must disembark from a train at one railroad station, travel from that station to another some two blocks to two miles distant, and board another train at the latter station; that Parmelee had contracted with the railroads to provide this transportation by special cabs carrying seven to ten passengers. The court said that Parmelee's contracts were exclusive in nature, adding:

> "The transportation of such passengers and their luggage between stations in Chicago is clearly a part of the stream of interstate commerce. When persons or goods move from a point of origin in one state to a point of destination in another, the fact that a part of that journey consists of transportation by an independent agency solely within the boundaries of one state does not make that portion of the trip any less interstate in character. *The Daniel Ball*, 10 Wall. 557, 565. That portion must be viewed in its relation to the entire journey rather than in isolation. So viewed, it is an integral step in the interstate movement. See *Stafford* v. *Wallace*, 258 U. S. 495.
>
> "Any attempt to monopolize or to impose an undue restraint on such a constituent part of interstate commerce brings the Sherman Act into operation." * * *"

Obviously these holdings conform with the following well-established principles: (1) a state may not obstruct or lay a direct burden on the privilege of engaging in interstate commerce, *First* v. *Brewster*, 282 U. S. 493, 498; *Mich. Com.* v. *Duke*, 266 U. S. 570, 577, 69 L. ed. 445; but

14. The destination intended by the passenger when he begins his journey and known to the carrier, determines the character of the commerce, whether interstate or not. *Spyout* v. *South Bend*, 277 U. S. 163, 168.

(2) nevertheless, it may incidently and indirectly affect it by a bona fide, legitimate, and reasonable exercise of its police power. 15 C.J.S. 266. In *Dahnke-Walker Co. v. Bondurant*, 257 U. S. 282, 290, the court said:

> "The commerce clause of the Constitution, Art. I, §8, cl. 3, expressly commits to Congress and impliedly withholds from the several States the power to regulate commerce among the latter. Such commerce is not confined to transportation from one State to another, but comprehends all commercial intercourse between different States and all the component parts of that intercourse. . . ."

The power here referred to may be exercised, not only in an act of Congress, but also in a regulation by the Interstate Commerce Commission. 15 C.J.S. 274.

Part I of the Interstate Commerce Act[15] deals with railroads as well as other subjects not relevant here. §3 (3) thereof, in its presently pertinent provisions, appeared in the original act of February 4, 1887.[16] It provides that all carriers of passengers subject to the act shall afford all reasonable facilities for the interchange of traffic between their respective lines and for the receiving, forwarding and delivering of passengers to and from connecting lines.[17] *Central Transfer Co. v. Terminal R. R.*, 288 U. S. 469, 473, note 1.

Part II of the same act[18] deals with motor carriers. As amended in 1940, 302(c)[19] provides as follows:

> §202(c) "Notwithstanding any provision of this

15. 49 U.S.C.A. §§1-27.

16. §3, second unnumbered paragraph, 24 Stat. 380.

17. There is no warrant for limiting the meaning of "connecting lines" to those having a direct physical connection. The term is commonly used as referring to all the lines making up a through route. *Atlantic Coast Line R. Co. v. U. S.*, 284 U. S. 288, 293.

18. 49 U. S. C. A. §§301-327. (1951 ed.).

19. 56 Stat. 300, where this section is known as section 202(a)

section or of section 203, the provisions of this part, [Part II], except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation and equipment, shall not apply—

"(1) to transportation by motor vehicle by a carrier by railroad subject to part I, * * * incidental to transportation or service subject * * * [thereto] in the performance within terminal areas of transfer, collection, or delivery services; but such transportation shall be considered to be and shall be regulated as transportation subject to part I when performed by such carrier by railroad * * *;

"(2) to transportation by motor vehicle by any person (whether as agent or under a contractual arrangement) for a common carrier by railroad subject to part I, * * * in the performance within terminal areas of transfer, collection, or delivery service; but such transportation shall be considered to be performed by such carrier * * * as part of, and shall be regulated in the same manner as, the transportation by railroad, * * * to which such services are incidental."

In Part I, §6(1) of the Interstate Commerce Act[20] requires every common carrier to file with the commission tariffs (therein referred to as schedules), for transportation, including joint rates over through routes. In this respect a tariff is to be treated the same as a statute. *Pennsylvania R. Co.* v. *International Coal Min. Co.*, 230 U. S. 184, at 197, 57 L. ed. 1446, 1451.

Relevant tariffs were filed with the Interstate Commerce Commission on behalf of the Terminal Lines.

The agreement of October 1, 1955[21] obligates Transfer to perform all the required passenger and hand baggage

20. 49 U. S. C. A. §6(1).

21. The Baltimore and Ohio Chicago Terminal Railroad Company, Chicago and Western Indiana Railroad Company and Chicago Union Station Company, therein referred to as "depot companies", are also parties to said agreement. That fact is not controlling in the decision of this case.

transfer service from the terminal station in Chicago of each incoming line to the terminal station in Chicago of each outgoing line, all at the expense of the latter, for the period beginning October 1, 1955 and ending September 30, 1960. This service (which has been since October 1, 1955 performed by Transfer) replaced the Parmelee service, with the exception of two types of operations local in their nature,[22] consisting of (a) transportation of friends or relatives accompanying a coupon holder between stations, and (b) transportation of a coupon holder to any hotel or other terminus "in the loop district of Chicago", as requested of the driver by the coupon holder.

2. We conclude that Transfer is an instrumentality used by Terminal Lines in interstate commerce and is subject to control of the federal government. We also conclude that the city can neither give nor take away such authority of Transfer to operate and that the city has no power of control over Transfer, except the control which it has generally in exercising its police power pertaining to such matters as public safety, maintenance of streets and the convenient operation of traffic. For a more detailed statement of the scope of such police power, see *Continental Bakery Co.* v. *Woodring*, 286 U. S. 352.

This is not a case in which a motor vehicle operator is denied the privilege of operating on a particular highway because of the congestion of traffic thereon, such as was true in *Bradley* v. *Public Utility Commission*, 289 U. S. 92, (on which, for some reason not clear to us, the city relies), but rather we have a case where an ordinance, in effect, bars Transfer from the entire network of highways within the downtown area of Chicago.

Pursuant to federal law, Terminal Lines have assumed an obligation to furnish the service in question as an interstation link in interstate commerce. The integration of

22. See *Status of Parmelee Transp. Co.*, 288 I. C. C. 95, at 100.

this service with the complex, and occasionally changing, schedules of the Terminal Lines and the ebb and flow of passenger traffic existing in the various stations, requires a continuing and intimate knowledge thereof, which the Terminal Lines possess. The city is not equipped to function effectively in this area. It follows that the choice as to the instrumentality to be used for that purpose properly belongs to the Terminal Lines. These facts preclude the selection of an operator of terminal vehicles by anyone other than the Terminal Lines. While the city has power to regulate the operation of terminal vehicles incidently to its regulation of street traffic generally, it has no power, directly or indirectly, to designate who shall own or operate such vehicles. The prior ordinance recognized this situation. It was limited to terminal vehicles having contracts with the Terminal Lines and, as to which vehicles, it exercised certain police powers of the city relating to traffic regulation. That ordinance made no attempt, and it was not intended, to select the operator of the service. In contrast, the 1955 ordinance consists of provisions which, in effect, name Parmelee as the exclusive operator of terminal vehicles in Chicago even though it has no contract with the Terminal Lines which are under a federally imposed obligation to furnish this terminal facility. Each of the Terminal Lines, which sells through tickets calling for interstate transportation in Chicago, thereby assumes an individual obligation to the passenger to furnish that service. Yet, under the 1955 ordinance, that railroad would have no direct control over the operator of that service and no opportunity to protect itself by an agreement indemnifying it from claims of passengers for damages arising out of the negligence of the operator. Other obvious considerations point to the practical necessity of a continuing control by the Terminal Lines of the instrumentality furnishing the service covered by the coupons sold by those lines to interstate passengers.

3. However, the city contends that the 1955 ordinance not only retains the police regulations of the prior ordinance, but demonstrates the city's concern with all passenger vehicles for hire, and specifically with the effect of the number of taxicabs as well as terminal vehicles on the safety of existing vehicular and pedestrian traffic. The city contends that in this respect the ordinance is valid as an exercise of the police power.

But the Terminal Lines argue that the 1955 ordinance was adopted for the sole and evident purpose, not of police power regulation, but of economic regulation. They say that, not only would the 1955 ordinance add nothing in respect to police power regulations that were not contained in the prior ordinance, but that the 1955 ordinance added "elaborate requirements for proof of public convenience and necessity and other elements of economic regulation of interstate commerce . . ." They add "that these new economic regulations would apply to all except Parmelee; Parmelee was granted a perpetual franchise free from these requirements. The amendment eliminated the requirement that no one could obtain a license unless he had a contract for interstation transfer with the railroads. The amendment unmistakably marked the ordinance as an economic regulation not within the city's power."

Significant is §28-31.1 of the 1955 ordinance which provides that no license for any terminal vehicle shall be issued except in the annual renewal of such license or upon transfer to permit replacement of a vehicle for that licensed, unless, after a public hearing, the commissioner shall report to the council that public convenience and necessity require additional terminal vehicle service and shall recommend the number of such vehicle licenses which may be issued. It is further provided that, in determining whether public convenience and necessity require such additional service, the following, *inter alia*, shall be con-

sidered: "2. The effect of an increase in the number of such vehicles on the safety of existing vehicular and pedestrian traffic in the area of their operation; . . ."

Terminal Lines argue that these are the only provisions of the 1955 ordinance which could even appear to relate to public safety. But they aver that, as a purported safety measure, this is sham and spurious.

To us it appears that the cost of maintaining the terminal vehicle service, which is initially borne by Transfer and ultimately, to the extent of coupons issued and used, by the individual Terminal Lines, will operate effectively as an economic brake upon any unjustified increase in the number of such vehicles. Moreover, if and when a greater number is demanded by the growth of interstate passenger traffic, the city would then have no right, in the guise of an exercise of its police power, to cripple interstate commerce by preventing a justifiable increase in the number of such vehicles required to meet the needs of that commerce.

We are thus led to conclude that there is no valid legal basis for the above-cited provisions of §28-31.1 of the 1955 ordinance. We are convinced that those provisions, which would in effect limit the number of terminal vehicle licenses to those held by Parmelee on July 26, 1955 and give Parmelee perpetual control thereof, constitute a designation of Parmelee by the council of the city, in lieu of Transfer, the instrumentality selected by the Terminal Lines, rather than an exercise of the city's police power over traffic. In this critical aspect the 1955 ordinance is invalid. If there were any doubt that this conclusion is correct, the legislative history of the ordinance dispels that doubt.

At meetings of the committee which recommended the 1955 ordinance for passage, the committee chairman made it clear that the objective sought was the assumption by

the city of the authority to designate the instrumentality which was to operate terminal vehicles between railroad stations in Chicago. The proceedings of the committee fail to indicate that the chairman or any member of the committee was interested in traffic regulations or any other aspect of the city's police power.

In attempting to justify the 1955 ordinance, which admittedly retained police regulations contained in the prior ordinance, the city points to photographs of two transfer vehicles which, the city says, do not comply with retained §28-4.1, which provides that no vehicle having a seating capacity for more than 7 passengers shall be licensed as a public passenger vehicle unless at least 2 doors on each side or a fixed aisle space is provided, and retained §28-17, which provides that it is unlawful to permit more than one passenger to occupy the front seat with the chauffeur. There is no indication in the record that any terminal vehicles used by Transfer, except the two appearing in the photographs, violate §28-4.1. Even if §28-4.1 and §28-17 are violated, that fact does not empower the city to bar, or even suspend, the operations of Transfer. *Castle v. Hayes Freight Lines*, 348 U. S. 61. The fact that Hayes was operating trucks under a federal certificate of convenience and necessity, under Part II of the Interstate Commerce Act,[23] does not distinguish that case in principle from the present case in which Transfer is engaged in a federally authorized activity. See 49 U.S.C.A. §302(c)(2), *supra*. If Transfer's vehicles do not conform to the requirements contained in the prior ordinance,[24] the city may refuse to issue licenses for the nonconforming vehicles and penalize their unlicensed opera-

23. 49 U. S. C. A. §301, *et seq.*
24. Ch. 28, Chicago Municipal Code.

tion in accord with §28-32. So, also, whenever Transfer is found guilty of violating §28-17 the city may proceed against it according to the penalties section.[25]

Undoubtedly the city has power to require that one engaged exclusively in interstate commerce may be required to procure from the city a license granting permission to use its highways and in addition pay a license fee demanded of all persons using automobiles on its highways as a fax for the maintenance of the highways and the administration of the laws governing the same. Highways being public property, users of them, although engaged exclusively in interstate commerce, are subject to regulation by the state or municipality to ensure safety and convenience and the conservation of the highways. Users of them, although engaged exclusively in interstate commerce, may be required to contribute to their cost and upkeep. Common carriers for hire, who make the highways their place of business, may properly be charged a tax for such use. *Clark* v. *Poor*, 274 U.S. 554, 557.

Both the language of the 1955 ordinance and its legislative history point to the fact that it is not legislation governing the manner of conducting a business or providing for a contribution toward the expense of highway maintenance, but that it requires a license, the granting of which, in turn, is made dependent upon the consent of the city to the prosecution of a business. This is not a valid requirement. *See Sault Ste. Marie* v. *International Transit Company*, 234 U.S. 333, 340, 58 L. ed. 1337, 1340.

As we have seen, the 1955 ordinance eliminated from

25. §28-32. "Any person violating any provision of this chapter for which a penalty is not otherwise provided shall be fined not less than $5.00 nor more than $100.00 for the first offense, not less than $25.00 nor more than $100.00 for the second offense during the same calendar year, and not less than $50.00 nor more than $100.00 for the third and succeeding offenses during the same calendar year and each day that any violation shall continue shall be deemed a separate and distinct offense."

§28-1 of the prior ordinance a requirement that a terminal vehicle must be operated under contracts with railroad and steamship companies, and, by a new section, §28-31.1, in effect permitted Parmelee's existing terminal vehicle licenses to become perpetual by means of annual renewal or by transfer to a replacement vehicle, and also provided, in effect, that Transfer could not obtain any terminal vehicle license unless it proved to the satisfaction of the public vehicle license commissioner "that public convenience and necessity shall require additional terminal vehicle service".

In *Buck* v. *Kuykendall*, 267 U.S. 307, it appears that Buck wished to operate an autostage line as a common carrier for hire for through interstate passengers, over a public highway in the state of Washington. Having complied with the state laws relating to motor vehicles and owners and drivers, and alleging willingness to comply with all applicable regulations concerning common carriers, Buck applied to the state for a prescribed certificate of public convenience and necessity. It was refused on the ground that the territory involved was already being adequately served by the holder of a certificate and that adequate transportation facilities were already being provided by four connecting autostage lines, all of which held such certificates from the state. The state relied upon its statute which prohibited common carriers for hire from using the highways by auto vehicles between fixed termini, or over regular routes, without having first obtained from the state a certificate of public convenience and necessity. Speaking of that statute, the court said, at 315:

> "* * * Its primary purpose is not regulation with a view to safety or to conservation of the highways, but the prohibition of competition. It determines not the manner of use, but the persons by whom the highways

> may be used. It prohibits such use to some persons while permitting it to others for the same purpose and in the same manner. * * * Thus, the provision of the Washington statute is a regulation, not of the use of its own highways, but of interstate commerce. Its effect upon such commerce is not merely to burden but to obstruct it. Such state action is forbidden by the Commerce Clause. * * *"

To the same effect is *Mayor of Vidalia* v. *McNeely*, 274 U. S. 676, at 683.[26]

4. We hold that it was unnecessary for Transfer to apply for licenses under the 1955 ordinance, because the issuance thereof unlawfully required a consent by the city to the prosecution of Transfer's business and was not merely a step in the regulation thereof. Being unnecessary, the relief prayed for herein may be granted without a showing that such application had been made before this suit was filed.

For the reasons hereinbefore set forth, the judgment of the district court is reversed and this cause is remanded to that court for further proceedings not inconsistent with the views herein set forth.

REVERSED AND REMANDED.

26. Both sides in the case at bar rely on *Columbia Terminals Co.* v. *Lambert*, 30 F. Supp. 28, appeal dismissed, 309 U. S. 620. The court there said that the question whether the state could demand that Columbia Terminals prove that its interstate commerce transfer operation would benefit the state, in order to obtain a state permit therefor, was not before it, because the state expressly admitted it lacked such power and made no such demand. The court said, at 31:

> "Since this statute applies to interstate as well as intrastate contract haulers, if the complaint alleged or the evidence disclosed such action on the part of the State Commission, plaintiff would be entitled to relief from such action on the part of the state officials. * * * But when the State * * * undertakes to exercise the right to say what interstate commerce will benefit the State and what will not, such action, with certain exceptions immaterial here, constitutes an unconstitutional violation of the commerce clause."

While this is dictum, it is in accord with our holding herein.